

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6075 of 1998

to

FIRST APPEAL No 6091 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?
- 1 to 5 : No

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SPECIAL LAND ACQUISITION

Versus

JASHBHAI CHATURBHAI PATEL

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Appearance:

Mr.U.A. Trivedi, AGP, for appellants

MR GM AMIN for Respondent No. 1

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CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 22/12/98

COMMON ORAL JUDGMENT :(Per: Panchal, J.)

1. Admitted. Mr. G.M. Amin, learned counsel, waives service of notice on behalf of the claimants in all these appeals. At the joint request of the learned counsel appearing for the parties, the appeals are taken up for final hearing today.

2. All these appeals, which have been filed under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, are directed against common judgment and award dated April 30, 1998, rendered by the learned Second Extra Assistant Judge, Kheda at Nadiad, in Land Reference Case No. 153 of 1991 to Land Reference Case No.169 of 1991 and, therefore, we propose to dispose of all these appeals by this common judgment.

3. The Central Government had proposed to acquire lands of village Chaklasi, Taluka Nadiad, District Kheda, for public purpose of Ahmedabad-Vadodara Express Road Overbridge No.15. On scrutiny of the proposal, the State Government was satisfied that the lands situated at village Chaklasi were likely to be needed for the said public purpose. Accordingly, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued which was published in the official gazette on October 28, 1987. The land owners whose lands were proposed to be acquired were served with notices under Section 4 of the Act. The land owners had filed objection against the proposed acquisition and after considering their objections, the Special Land Acquisition Officer, Express High-way, Kheda, had submitted report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands specified in the notification which was issued under Section 4(1) of the Act were needed for public purpose of Ahmedabad-Vadodara Express Road Overbridge No.5. Accordingly, declaration under Section 6 of the Act was made which was also published in the Government Gazette on March 1988. Interested persons were thereafter served with notice under Section 9 of the Act for determination of compensation. Having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation at the rate of Rs.550/- per Are by award dated August 3, 1988. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate and, therefore, they did not accept the same. They made written applications to the Special Land Acquisition Officer requiring him to refer the matters to the Court for the

purpose of determination of compensation. Accordingly, references were made to the District Court, Kheda, at Nadiad, which were numbered as Land Reference Case No.153 of 1991 to Land Reference Case No. 169 of 1991. In the reference applications, the claimants claimed that, having regard to fertility and potentiality of the lands acquired, they were entitled to higher compensation. By filing reference applications, the claimants claimed compensation at the rate of Rs.3000/- per Are. The reference applications were resisted by the present appellants vide reply 8. In the reply, it was mentioned that the Special Land Acquisition Officer was justified in awarding compensation at the rate of Rs.550/- per Are to the claimants in view of fertility of the lands, income, etc. and, therefore, reference applications should be dismissed. Appropriate issues were raised by the Reference Court for determination at Exh.9. The parties had submitted purshis at Exh.10 requesting the Reference Court to dispose of all the references by common judgment. On behalf of the claimants, witness, Navinbhai Gordhanbhai Patel, was examined. He stated that the lands acquired were more fertile than the lands of Anand town. He produced two previous awards of the Reference Court for the purpose of substantiating the claim of the claimants that they were entitled to compensation at the rate of Rs.3000/- per Are. No oral or documentary evidence was adduced by the present appellants. The Reference Court concluded that the previous award of the Reference Court rendered in respect of the lands situated at Boriavi was relevant piece of evidence for the purpose of ascertaining the market value of the lands acquired in the present case. In the said case, the lands of village Boriavi were acquired for the Express Highway and notification under Section 4(1) of the Act was published on August 26, 1986. Therein the Reference Court had held that the claimants were entitled to compensation at the rate of Rs.2000/- per Are. After holding that the previous award rendered in respect of the lands of village Boriavi was relevant piece of evidence, the Reference Court noted that the lands of village Boriavi were more fertile than the lands of village Chaklasi and Boriavi was better situated than village Chaklasi so far as Highway, Railway Station, etc. are concerned. Under the circumstance, the Reference Court was of the opinion that 20% should be deducted from the market value of the lands of village Boriavi as indicated in Exh.15. The Reference Court therefore held that the claimants would be entitled to compensation at the rate of Rs.1600/- per Are. The Reference Court further noted that there was time lag of one year between notifications issued under Section 4(1) of the Act in two

cases and, therefore, the claimants would be entitled to reasonable rise in price of the lands at the rate of 7% per annum. Thus, in the final analysis, the Reference Court has held that the claimants would be entitled to compensation at the rate of Rs.1700/- per Are by common judgment, giving rise to the present appeals.

4. Mr. U.A. Trivedi, learned Assistant Government Pleader, appearing for the appellants, submitted that the common award rendered by the Reference Court is neither warranted by the facts of the case nor warranted by law and, therefore, the appeals should be admitted. It was pleaded that the previous award of the Reference Court rendered in respect of the lands of village Boriavi was not comparable at all for the purpose of ascertaining the market value of the lands acquired in the present case and, therefore, the claimants should not have been awarded compensation at the rate of Rs.1700/- per Are. The learned counsel for the State Government submitted that no cogent and reliable evidence was adduced by the claimants to substantiate their claim that they were entitled to compensation at the rate of Rs.3000/- per Are and, therefore, the Reference Applications ought to have been dismissed by the Reference Court.

5. Mr. G.M. Amin, the learned counsel for the claimants, urged that two awards produced and relied upon by the claimants were relevant for the purpose of ascertaining market value of the lands acquired in the present case and, therefore, it cannot be said that any error is committed by the Reference Court in placing reliance upon those awards while ascertaining the market value of the lands acquired in the present case. It was claimed that Exh.15, which is previous award of the Reference Court, in respect of the lands of village Boriavi, is not only proximate in point of time, but also relevant from the view point of fertility of the lands acquired and, therefore, the same should be taken into consideration while evaluating the lands acquired in this case. It was emphasized that Exh.16 which is previous award of the Court in respect of lands of village Samarkha, Taluka Nadiad, indicates that the claimants were paid compensation at the rate of Rs.1500/- per Are and as the said award is a comparable instance the award of compensation made in favour of the present claimants should not be disturbed by the Court in the present case.

6. We have heard the learned counsel for the parties at length. We have also taken into consideration the relevant documents produced by the learned counsel for the parties for our perusal. As noted earlier witness,

Navinbhai Gordhanbhai Patel, was examined on behalf of the claimants. Though he stated in his evidence that the claimants were deriving higher income from the sale of agricultural produce raised on the acquired lands, he could not substantiate his say by production of relevant documentary evidence. The witness could not produce sale instance of the acquired lands or sale instances relating to the lands adjacent to the acquired lands. Under the circumstance, except the previous awards, no other evidence was led by the claimants to substantiate their claim that they were entitled to compensation at the rate of Rs.3000/- per Are. Exh.15 is previous award of the Reference Court rendered in Land Reference Case No.608 of 1990 and other cognate matters. Therein, agricultural lands of village Boriavi, Taluka Anand, were acquired for public purpose of Express Highway. Notification under Section 4(1) of the Act was published on August 26, 1986. The Land Acquisition Officer had offered compensation to the claimants in that case at the rate of Rs.350/- per Are against their demand of Rs.5000/- per Are. The Reference Court by award dated October 20, 1997 awarded compensation to the claimants at the rate of Rs.2000/per Are. Feeling aggrieved by the said award, the Special Land Acquisition Officer as well as the Executive Engineer, R & B Division, Ahmedabad, preferred First Appeal No. 1458 of 1998 to First Appeal No.1483 of 1998. Those appeals were time barred and, therefore, Civil Application No.5359 of 1998 to Civil Application No.5383 of 1998 were filed for condonation of delay. The applications for condonation of delay were placed before the Division Bench comprising Y.B. Bhatt & R.P. Dholakia, JJ. The Court did not condone delay and also dismissed the appeals on merits by common order dated August 31, 1998.

7. Exh.16 is judgment of the Reference Court rendered in Land Acquisition Reference Cases Nos.1 of 1990 to 24 of 1990 and 171 of 1990 to 191 of 1990. The said award indicates that the lands of village Samarkha, Taluka Anand, were acquired for Express Highway. Notification under Section 4 of the Act was published on August 29, 1986. The Land Acquisition Officer in that case had offered compensation to the claimants at the rate of Rs.3.50 per sq.mtr. Feeling aggrieved by that offer, the references were sought and the Reference Court by judgment and award dated December 26, 1991, awarded compensation to the claimants at the rate of Rs.1500/- per Are. Common award rendered by the Reference Court was challenged before the High Court by way of filing First Appeal No.1907 of 1992 to First Appeal No.1950 of 1992. Therein, the claimants had also filed cross

objections. The High Court, by judgment dated November 12/13, 1992, dismissed appeals as well as cross objections.

8. The evidence of witness, Navinbhai Gordhanbhai Patel, would indicate that the lands of village Samarkha are comparable to the lands of village Chaklasi. Not only their fertility is similar but even proportion of agricultural produce is also equal. Village Samarkha is near village Chaklasi. Exh.16 which is award relating to lands of Samarkha would indicate that notification under Section 4(1) of the Act was published on September 29, 1986, whereas, in the present case, notification under Section 4(1) of the Act was published on October 28, 1987. Therefore, if reasonable rise in price of the lands is considered, we are of the opinion that the claimants would be entitled to compensation at the rate of Rs.1600/- per Are. Again, previous award of the Reference Court produced by the claimants at Exh.15 would indicate that the claimants in that case were paid compensation at the rate of Rs.2000/- per Are. Therein, notification under Section 4(1) of the Act was published on August 26, 1986. Though, in this case, notification under Section 4(1) of the Act was published on October 28, 1987, the Reference Court was justified in not considering any rise in price on account of time lag between the notifications under section 4(1) of the Act, because evidence of Navinbhai Gordhanbhai Patel shows that the lands of village Boriavi are better in quality than the lands of village Chaklasi. In view of the better quality of lands situated at Boriavi, the Reference Court was justified in deducting 20% from the market price of the lands of Boriavi while ascertaining the market value of the lands of village Chaklasi. However, thereafter, the Reference Court should not have considered rise in price of the lands at the rate of 7% per annum for the purpose of ascertaining the market value of the lands acquired in the present case. It is well settled that the previous awards of the Court in respect of similar and adjacent lands and which have become final, can be taken into consideration for the purpose of ascertaining the market value of the lands acquired in subsequent case. As noted earlier, except previous awards, no other evidence was led either by the claimants or by the present appellants to enable the Court to determine the market value of the lands acquired. Therefore, it cannot be said that any error was committed by the Reference Court in placing reliance upon those awards while evaluating market value of the lands acquired in this case. Further, we find that the market value of the lands acquired in this case ought to have

been determined at the rate of Rs.1600/- per Are.

9. For the foregoing reasons, all the appeals filed by the State Government are partly allowed. It is held that the claimants would be entitled to compensation at the rate of Rs.1600/- per Are instead of Rs.1700/- per Are as held by the Reference Court. Other part of the award of the Reference Court is not disturbed at all and the claimants would be entitled to all other benefits as enumerated in the common award. The office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

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(swamy)